

# MEMO

To: All Interested Parties

Date: August 22, 2014

Re: ***Invitation for Comment on 10th Circuit Local Rule Changes for 2015 and Posting of Fed. R. App. P. Changes for 2015***

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On December 1, 2014, a change to Federal Rule of Appellate Procedure 6 will take effect. That change is outlined below. On January 1, 2015, changes to the 10th Circuit local rules will take effect. From August 22 through October 20, 2014 the court invites comment and feedback from all interested parties on this year's proposed local rule changes. Comments may be emailed to [10<sup>th</sup> Circuit Clerk@ca10.uscourts.gov](mailto:10<sup>th</sup>CircuitClerk@ca10.uscourts.gov). In addition, interested parties are invited to call the office of the Clerk with any questions they may have. That number is 303-844-3157. A final version of the rules will be posted on the court's website on or around November 25, 2014. For comment purposes, we have posted on the website both a clean draft of the proposed rules and a redlined version.

All of the changes are outlined below, but in particular practitioners may want to review closely the proposed changes to the appendix requirement in counseled civil cases and criminal cases where there is retained counsel (these changes will not impact criminal cases proceeding with Criminal Justice Act counsel).

## ***Federal Rules of Appellate Procedure Changes for 2015***

As is noted above, Fed. R. App. P. 6 (bankruptcy appeals) has been revised this year. The changes address three primary areas. First, the Rule has been updated to include the latest numeric revisions to the new bankruptcy rules. Second, language in the rule has been changed to incorporate and recognize the use of electronic records. Third, and finally, the Rule has been updated to include reference to discretionary bankruptcy appeals filed in this court per 28 U.S.C. § 158(d)(2).

## ***10th Circuit Local Rules***

In this section, proposed changes to the local rules are addressed in chronological order.

**10th Cir. R. 9.2(B)****(addressing bail appeals and motions for bail filed in pending appeals)**

The current version of R. 9.2(B) requires parties to file a hard copy addendum containing materials pertinent to the bail issue. The proposed new rule changes that to an *electronic appendix* requirement. In addition, the current rule requires as part of the addendum a copy of the district court docket entries. The proposed rule eliminates that requirement.

**10th Cir. R. 10.2(B)(regarding submission of appendix materials in retained counsel cases)**

In an effort to corral all requirements regarding appendices in a single rule, this proposed alteration changes some language and adds a cross reference to Rule 30, where all of the specific requirements for appendices can now be found.

**10th Cir. R. 11.1(regarding appendix references)**

The proposed changes to this rule also add cross referencing to the appendix rule (which is R. 30) and also makes clear the reference point for the appellee's supplemental appendix.

**10th Cir. R. 14.1(addressing the local rules that are applicable to appeals from the Tax Court)**

The proposed changes to this rule address the appendix rules applicable to Tax Court cases (which will now include the proposed electronic appendix rule). These proposed changes would only apply to counseled cases, and would not apply to pro se Tax Court matters.

**10th Cir. R. 15.3(addressing service of agency petitions)**

Per Fed. R. App. P. 15(c), the circuit clerk is responsible for serving a copy of petitions for review or enforcement on the respondents. By contrast, the petitioner serves all intervenors and other agency participants. The proposed rule change/addition, which will be local rule 15.3, adds a requirement, as part of the petitioner's Fed. R. App. P. 15(c)(2) filing (which requires the petitioner to identify the parties it has served) to include a list of the respondents that require service by the clerk's office.

### **10th Cir. R. 25.3 and 25.4**

#### **(addressing exemptions from electronic filing and electronic service)**

Local rule 25.3 outlines the procedure to follow in seeking an exemption from electronic filing requirements. The “exemption rule” is required under the FRAP. *See* Fed. R. App. P. 25(a)(2)(D). The proposed change to the rule for this year adds a reference regarding the electronic appendix requirement. It also references newly proposed R. 30.3(A), which is a specific rule addressing motions seeking an exemption from the electronic appendix requirement.

### **10th Cir. R. 28.1(B)(citing a record on appeal)**

The proposed change to this local rule, which provides guidance to counsel on the convention to be used in citing to the “record on appeal,” makes clear that if it is available, counsel should cite to the record volume, as well as to the district court docket number. This rule is applicable primarily in CJA counsel cases where the attorneys are citing to a designated record. In appendix cases counsel cite to the page and appendix volume.

### **10th Cir. R. 30(requirements for the electronic appendix and exemptions)**

As noted previously, the major proposed change to the local rules for next year is the addition of a local rule on appendices which puts all of the basic requirements in a single reference point. Beginning January 1, 2015, electronic appendices will be required in all retained counsel civil and criminal cases (again, this new rule will not apply in those appeals where the appellant or appellee is represented by CJA counsel). The rule will apply for any appendix due for filing after January 1st. In addition to filing electronically, counsel will also be required to submit a single hard copy of the appendix to the clerk’s office. Service on other parties to the appeal may, however, be accomplished using the ECF system. That is, in the normal course appellant’s counsel will not be required to serve a hard copy of the appendix on other parties.

The time for filing is addressed in the new proposed rule, as are requirements regarding content (including a cross reference to R. 10.3, which is the primary content rule for all record materials). In addition, this proposed rule alerts counsel to the court’s CM/ECF Manual, where technical requirements and filing instructions will be found. In this regard, all practitioners should note an updated version of the CM/ECF Manual will be posted in December. That Manual will address, among other topics relevant to the electronic appendix, file size limitations, uploading pdfs, certificates of service, sealed materials, ex parte volumes, adobe acrobat instructions, and the use of hyperlinks.

The proposed local rule also addresses the single hard copy requirement. Practitioners should note that going forward, no volume of the hard copy appendix may be more than 300 pages. Finally, consistent with Fed. R. App. P. 25(a)(D), and as noted above, proposed R. 30.3 directs counsel on how (and when) to seek an exemption from the electronic appendix requirement. As the proposed rule explains, if an exception is allowed, the court will require additional hard copies to be filed with the clerk, and counsel will be required to serve hard copies of the appendix on all other parties.

#### **CJA Plan (Addendum I to the rules)**

This year very minor changes have been made to update language in the CJA Plan.